

**MINUTES
BOARD OF ADJUSTMENT
WEDNESDAY, MARCH 18, 2015
HOOD ROOM, MATTHEWS TOWN HALL**

PRESENT: Chairman Jim Jiles, Members Cecil Sumners, Jim Mortimer, Jerry Meek and Jeanne Moore; Alternate Members Thomas Lawing, and Peter Tuz; Attorney Robert Blythe; Planning Director Kathi Ingrish, Senior Planner Jay Camp and Zoning Technician/Deputy Town Clerk Betty Lynd

ABSENT: Alternate Member Gary Smith

CALL TO ORDER/INVOCATION:

Chairman Jim Jiles called the meeting to order at 7:06 p.m. and delivered the invocation.

APPROVAL OF THE MINUTES:

Mr. Jiles stated that the board would be approving the minutes from the December 4, 2014 and March 12, 2015 meetings.

Mr. Peter Tuz noted that a correction needed to be made to the minutes of the December 4, 2014 meeting on page 3, paragraph 4. The word "Present" should read as "President". Mr. Cecil Sumners made a motion to approve the minutes as corrected. Mr. Jim Mortimer seconded the motion. The vote was unanimous.

ELECTIONS:

Ms. Jeanne Moore made a motion to nominate Jim Jiles. Mr. Sumners seconded the motion to nominate Mr. Jiles. Mr. Sumners made a motion to close nominations for Chairman. Ms. Moore seconded that motion. With one nomination made, Mr. Jiles declared himself as chair for the upcoming year.

Ms. Moore made a motion to nominate Mr. Jim Mortimer as Vice-chair. Mr. Mortimer respectfully declined the nomination. Mr. Jiles made a motion to nominate Mr. Jerry Meek. Ms. Moore seconded that motion. Mr. Jiles made a motion to close nominations. Mr. Sumners seconded that motion. With one nomination made, Mr. Meek was determined to be Vice-chair.

SWEARING IN:

Chairman Jiles swore in the following speakers: Senior Planner Jay Camp, applicant Cliff Boyd, and Joel Causey

VARIANCE REQUEST: BA2014-11, MARA, 1200 South Trade St

STAFF REPORT:

Mr. Camp handed out an updated site plan that was received by staff on March 18, 2015. Mr. Camp reviewed the last Board of Adjustment meeting on December 4, 2014 that consisted of a cell tower review and 12 variance requests. These were all approved. Since the December meeting, Staff and MARA has worked together to slim down the remaining variances requested by the applicant. Mr. Camp explained that five variances were to be presented to the board tonight, but after some site plan changes made by the applicant, it would only be necessary to review 4 variances tonight. The fourth variance on the list, which concerned a reduction in the minimum tree canopy will no longer be needed. The applicant has agreed to comply with that standard.

Mr. Camp gave further background on the case. The variance requests concern the MARA Athletic Complex and is in conjunction with a rezoning request that is nearing the final stages. The rezoning request was presented to the Planning Board on March 17, 2015. They recommended approval with a 7-0 unanimous vote. Final action will be taken by the Town Board on this request on March 23, 2015. The site is primarily zoned RU with a small portion of R-15. When the Unified Development Ordinance was adopted on April 1, 2014, the RU zoning district was removed. Therefore, the site became legal nonconforming. There were only two sites zoned RU left in the town. MARA did agree to rezone to R/I(CD) which is the most appropriate zoning classification for the site. As stated previously, the applicant is requesting four variances. The first is a 30 foot (30') variance to the 50 foot (50') side yard setback. This variance would allow the applicants to continue usage of the existing improvements completed on the site such as ball fields and lighting that currently exist in that setback. The second variance is a 50 foot (50') variance to the 50 foot (50') front setback. Their current linear parking along S Trade Street and athletic field 1 currently exist in the front setback. The S Trade Street project has further impacted the property which leaves a front setback of zero feet. The applicants are also asking for a variance to allow existing and future expansion (ball fields) without meeting parking lots, screening, and landscaping. They would like to utilize existing vegetation to meet the code as well as to be exempt the parking from needing to be changed in order to meet the new zoning category's specifications. As previously stated, variance request number four has been stricken. The final request is to allow gravel as a surface material for existing and future parking. The intent is to maintain existing parking which is currently gravel as well as allow future parking to utilize gravel to maintain continuity on the site.

Mr. Jim Mortimer asked what the barrier would be between parking on the site and S Trade Street. Mr. Camp stated that staff has worked with the applicant on parking barriers. In this particular area they will utilize parking wheelstops in order to keep cars from parking too close to the street. The Town has struggled to acquire right-of-way during the S Trade Street project and wheelstops are the only available thing to use here.

Mr. Jiles asked if there would be loss parking due to the South Trade Street project. Mr. Camp stated that the site currently meets our parking code. There are 430 spaces on the site. Mr. Jiles asked if the project is okay with the total number of curb cuts due to the impact of the road project. Mr. Camp stated that the number of curb cuts does meet the Town code. There is over 1000 feet (1000') of lot frontage. They are well beyond the threshold to have 3 or more driveways. Mr. Jiles asked if the new connector road was used in the calculation of frontage. Mr. Camp stated that it was.

Ms. Moore asked if the site met parking requirements, were the citizens utilizing the site only parking across the street out of convenience and not necessity because the area they park in will be gone due to the road project. Mr. Camp stated that he would defer that question to the applicant, but that the site would have a net gain in parking spaces.

Mr. Meek asked if the variance requests were solely a result of the loss of the RU zoning classification. Mr. Camp stated that the site was heavily impacted due to the change from RU to R/I. The perimeter yards were severely affected. The site has had gravel parking for at least 50 years. Parking lot and landscaping standards were affected due to the change. Some hardship is also derived from the S Trade Street widening.

Mr. Jiles asked about the nonconforming status of the landscaping, parking lots, etc. within the perimeter yards. Mr. Camp stated that the only site comparable to this one would be Renfrow Hardware. There was no zoning code to consider when that site was developed. Along the same line, it is difficult for staff to go back in time and note when each improvement was made and when the zoning code changed for each of those things (parking lots, ball fields, etc.) The staff's view is that as of today the site is legal nonconforming. If there was not a rezoning request before the Board of Commissioners, the site would remain as-is. However, any improvements or site changes would have to go through site plan approval and meet our code requirements.

Mr. Meek stated that because one of the board's findings is that there is hardship to the applicant, it would helpful to know the changes in code versus the changes made to the site. Mr. Camp stated that it

would be a difficult process to match up each change to the site with what specific code standards it would have had to meet to find anything done illegally on the site. Ms. Moore stated that the change in zoning categories is the hardship to the applicant. Mr. Camp stated that the Town has a policy of converting old districts. For example, the Town has had numerous discussions concerning the old Conditional District. The Town is asking the applicant to rezone, therefore there are some variances required in order to move forward. Mr. Camp also stated that the variances would still be required even if the applicant did not want to make any future changes to the site. Ms. Moore asked for confirmation that if the board did not approve the variances, the applicant would not be able to make future changes to the site. Mr. Camp stated that is true. Mr. Jiles stated that it would be hard to determine whether each change made to the site over the years met the current zoning code at that time, but that no matter the existing zoning or new zoning category the site would be nonconforming.

Mr. Meek asked if the staff had any reason to believe the applicant was nonconforming before the zoning classification was removed. Ms. Moore and Mr. Mortimer do not believe that it is relevant to the current request. Mr. Jiles stated it is relevant to some degree because there are additional requirements to landscaping and so forth. Ms. Moore stated that the variance requests would bring the site in conformance with the R/I zoning district. Mr. Camp noted that the applicant is committed to supplemental landscaping along the property lines that are adjacent to single family homes.

Mr. Cecil Sumners asked if the board granted the variances for landscaping and gravel, do the variances run with the property. Mr. Camp stated that the variances run with the land. However, this is a site specific plan. There variances would be useless to someone not developing athletic fields.

Mr. Blythe stated that if the use changed to a park, for example, the site would have to go through another approval process. Mr. Camp stated that the variances are tied to this plan as well as the conditional notes in the rezoning application.

Mr. Peter Tuz asked about gravel versus asphalt within the Town's standards. Gravel is a permeable surface and it would be a better option for that site. Mr. Camp stated that typically in a non-residential setting, asphalt is typically easier to maintain and stripe. This particular site is not a 24/7 operating site. There will certain peaks where cars use the parking lots. Mr. Tuz asked if that issue was brought up during the Planning Board's discussions. Mr. Camp stated that he did not believe that was discussed.

Mr. Cliff Boyd, the 2014 President of MARA, was the first applicant to speak. He introduced Susan Irvin as their attorney and Joel Causey who was the architect on the project. Mr. Boyd wanted to clarify some answers to previous questions by the board. He stated that the project did lose some parking due to the road construction. Originally a parking variance was worked into the request. However, after working with the staff MARA was able to reconfigure the parking in order to add back spaces and utilize the existing space. Therefore, the parking variance was eliminated. People did park across the street out of convenience due to there being no curb. However, there will be a curb in the future which will prevent citizens from parking outside of the site. The real world presents issues when many people come from out of town to events. MARA has worked extensively on employee control and logistics to stagger game times in order to avoid parking congestion. Mr. Boyd also stated that Susan Irvin will discuss the timing of some changes made on the site.

Mr. Boyd addressed a brief history of MARA. The Goodman family donated the original land to provide an area where kids in Matthews can play. It was named after her late husband, Arthur Goodman. The site has 13 sports fields. MARA supports 10 sports annually. Last year, MARA was able to serve over 2400 children. The mission of MARA is to create a safe place for families to have fun and teach kids the fundamentals of sports. This mission helps to build a sense of community in Matthews. MARA is a part of Matthew's fabric. It provides a significant source of revenue for Matthews' businesses. An estimated \$200,000 was spent at one major tournament held at MARA last year. MARA makes kids happier, healthier, less drug use, less academic issues, etc. MARA is an all-volunteer organization. MARA has advanced their mission by dedicating a new field recently to girl's t-ball. MARA also hosts several successful charity tournaments. MARA would like to continue to be a great partner to the Town.

Ms. Susan Irvin, the attorney for MARA, came to speak next. Ms. Irvin stated that the conversion to the R/I district is what triggered the variances. MARA was approached by the Town to rezone, but during the process MARA wanted to create a conditional plan to address what is currently on the site and where the site was in nonconformance. These discussions began in June 2014. Meetings continued to create a list of necessary variances. The next step after this meeting would be the final decision at the Town Board's meeting on March 23rd.

There are a few changes to the site plan. "Future parking area C" was removed from the plan. This has been changed to a tree canopy area which brings the site to the 15 percent (15%) required in the ordinance.

Ms. Irvin addressed the unnecessary hardship for the applicant. This is primarily a result of the R/I district regulations. The R/I district requires 50 foot (50') setbacks instead of a 20 foot (20') side and rear and 40 foot (40') front setback. The MARA site would lose significant land and parking. There would be a total loss of 99 spaces. The total area of land lost would be 2.475 acres or 8.78% of the site's land. This would be the equivalent of 6.5 athletic fields. The bulk of the landscaping is on the side and to the rear. Those parking lots have been constructed. MARA believes that those parking lots were constructed according to the zoning code at the time. The purpose of the landscaping requirements is to visually minimize parking to public streets. Due to the size of the park and the location of the athletic park, you cannot see much of the parking. This would make the landscaping requirements unnecessary. The site would have to be drastically altered to affect parking if the number of trees (over 400) were required to be planted along parking lots. Ms. Irvin stated that she did not believe that gravel was prohibited in the RU district for parking. There is a section in the Unified Development Ordinance that states that alternative surfaces are allowed for nonresidential use in residential districts. This is Section 155.607.1.C.8. From a practical standpoint, addressing the unnecessary element, if asphalt is required for future parking there would be an inconsistency in parking surfaces on the sites. To address the no special privileges element, the park was established in 1956 and there is only one other site that is zoned RU. The variances requested are at a minimum to provide relief to the site. From the public street, change will not be obvious for additional parking or where sports fields would be improved. To provide a timeline of some changes, Ms. Irvin pointed out that in a 1960s aerial photograph, Field 1, a north parking area, and parking along South Trade Street exists. This was before any enactment of a zoning ordinance in Matthews.

Ms. Irvin then wanted to touch on the peculiarity of the hardships to the property. Ms. Irvin stated that this is a large piece of property embedded within the town. The loss of 2.45 acres and the reduction of parking due to necessary landscaping would be catastrophic to MARA's mission. The widening of South Trade Street pushed the front setback 16 feet (16') into the park. The zoning conversion would then push the front setback another 10 feet (10') into the park.

Ms. Irvin stated that the hardship did not result from the applicant. The variances are a result of the adoption of the Unified Development Ordinance and the need to rezone the property to R/I. The widening of South Trade Street has also played a significant part. The use of this property has developed since 1956 and in the applicant's opinion remained in compliance since that time. There has been no misdeed on the part of the park.

The final element Ms. Irvin wanted to touch on was consistency with the spirit of the site. The MARA mission is very important to the Town and to the public. The changes would not be noticed from the public street. The setbacks have been observed and have not been violated. Gravel parking currently exists on the site and the continuance of this would keep the site consistent. The landscaping currently on the site is compatible with a sports field use. Ms. Irvin stated that the biggest consequence of not granting the variances would be denying MARA the use of its most valuable asset, meaning the land. Facilities would not be allowed to be improved or expanded upon in the future if the variances are denied. Parking would be diminished.

Ms. Irvin handed out a table of suggested findings of fact for the Board of Adjustment to use.

Ms. Moore asked how the loss of the land acreage would impact MARA financially. Ms. Irvin stated that MARA is a nonprofit organization and therefore, it impacts MARA's mission rather than their finances. It affects their ability to accommodate future sports and an increased number of youth. Ms. Moore asked if MARA could obtain the outparcel at Butler. Ms. Irvin stated that she only mentioned that property because it is the only other property zoned RU within Matthews. It is a much smaller property than MARA's location. This lends to the peculiar nature of the applicant's hardship.

Mr. Meek stated that no one doubts the MARA mission. Mr. Meek asked with respect to variances 1 and 3, to what degree are those requests to get out of nonconformity as opposed to future expansion. Because hardship is a required element, Mr. Meek believed that getting out of nonconformity would be a more formidable argument as opposed to obtaining them for improvements that do not exist yet. Ms. Irvin stated that one thing MARA tried to do in discussions with staff was go through all the possibilities of what might be needed in the future to address the needs of MARA to utilize the 30 feet taken away. Parking was able to be modified for the future. It was more difficult with the sports fields to predict what MARA would need in the future.

Mr. Boyd stated that a good example would be the football field. Football is a sport that is losing attendance. Football may not exist in the future. If it does not exist in the future, MARA does not have an idea of what to turn the football field into. It is difficult to project those things, so MARA would like the latitude to use the land for the same purpose (athletic field) but to take advantage of space. Ms. Irvin stated that the rezoning is taking the 30 feet all the way around. We tried to make it easier to envision or grant a variance for a specific use by projecting what the future fields would be. It was difficult to do that because they cannot predict the kid's future needs. MARA absolutely requires the variances because the hardship exists for existing improvements as well as future improvements. It is Ms. Irvin's opinion that the existing improvements are legally nonconforming, and the variances should really be for future use. A variance for a legally nonconforming structure doesn't give much to the applicant than they already have, except for being able to rebuild the structure if damage occurs. The true variance is against the loss of the 30 feet (30') because having that available would allow them to utilize space in the future.

Ms. Moore stated that even plans made now for future uses could change eventually. Ms. Irvin stated that was correct. If MARA waited until those needs presented themselves, they would have to come in each time for a variance. That could be costly to a nonprofit organization.

Mr. Jiles stated that the variance would allow a 20 foot buffer around the property. He stated that another element besides screening for appearance to consider would be screening against sound and light affecting adjacent properties as well. Will this variance keep you from being required to plant screening around the property? Ms. Irvin stated that MARA has discussed supplemental screening within the 20 feet (20'). It has been added as a zoning note on the plans that will go before the Town Board for approval. Mr. Sumners asked if it was possible to see that zoning note. While the note was being located, Ms. Irvin asked Mr. Boyd and Mr. Causey to state for the record that any information she had to present was correct. Both stated that all testimony was true. Mr. Jiles wanted to address the issue of lighting while the note was being located. He stated that many times with athletic fields there can be an issue of overrun of lighting. This lends to the screening issue. Mr. Jiles said he would assume that there is a plan to address that issue as well. Ms. Irvin stated that during the course of the rezoning, a community meeting was held to discuss potential issues with adjacent property owners. There have been emails sent to the Town Board in support of MARA. Mr. Jiles stated that those things needed to be considered and he just wanted to make sure that those elements were included in the zoning notes on the plans. Ms. Moore stated she was under the assumption that the lighting would remain the same as it exists today. Ms. Irvin stated that all existing lighting would remain, but all future lighting would be in compliance with the ordinance. Ms. Irvin read the zoning note concerning screening: "Petitioner shall provide supplemental perimeter screening when necessary to meet the intent of Section 155.606.6." Mr. Jiles stated that he would like for that plan to be placed within the board's record. Ms. Irvin stated that the petition would include this plan.

Mr. Jiles asked if there were any swim buffers or anything similar to that within the site. Mr. Camp stated those were not an issue on the site.

Mr. Tuz stated he did not have an issue with the setback along South Trade Street where the parking is as much as he had an issue with safety. He stated there should be some type of setback or mitigation between the parking and road to separate people getting out of their cars and the actual road because a curb will not be enough. If a ball gets hit in that direction, kids want to chase the ball and could end up in the road. Another concern would be traffic jumping the curb and hitting pedestrians or other cars in the parking lot. Perhaps a small wall would prevent that issue. Ms. Irvin stated that MARA had not discussed that because it is very tight between the parking lot and sidewalk. We would be open to discuss it. Mr. Jiles stated that the board was not responsible for designing the site. Mr. Tuz stated that a 0 foot (0') setback would give you sidewalk and then immediately street.

Mr. Jiles asked if staff was comfortable with reducing the tree canopy requirement. Ms. Irvin stated that requested variance was withdrawn.

DELIBERATION:

Mr. Blythe stated that all five regular member were present and there was no need to ask for an alternate to vote.

Ms. Moore suggested the board discuss each variance separately. Mr. Jiles concurred.

In discussing the first variance, Ms. Moore stated that the Town dictated the change in zoning. The applicant is trying to conform to everything the Town has asked for. She stated that this was the case for every variance. There is no opposition in attendance. Mr. Jiles stated that the zoning change was caused by the Town and if they grant the variances, the adjacent properties will still be protected. Ms. Moore stated the hardship was not cause by the applicant. Mr. Jiles stated that strict enforcement of the ordinance would deny the applicant the total use of their property. Ms. Moore stated that it would not necessarily deny them the use of the property as much as it would deny them future expansion. Mr. Jiles stated that it would inhibit improvement. The proposed use and appearance of additions to the property do not have a negative impact. Based on testimony heard and the fact that it is a CD plan, meaning there are conditions, this site will not be detrimental to neighborhoods.

Finding of Facts

Mr. Blythe stated that if the board agreed with the proposed findings of facts submitted by the applicant, they had the ability to adopt them. The votes would need to be separate on each variance.

Mr. Jiles stated that the findings of fact are similar to the seven items the board uses in deliberation. The board agrees that they all apply.

Ms. Moore stated that applicant would feel more comfortable if the board adopted their proposed findings of facts. Mr. Blythe stated that it was possible. Mr. Jiles asked if any board member had a problem with the findings of facts presented. Ms. Moore stated that she was comfortable. Mr. Tuz asked if lighting and screening would be discussed in motions. Mr. Jiles stated they can make a motion based on the findings of facts and inclusion of the revised site plans and zoning notes. The applicant must abide by those plans in the rezoning anyways.

Mr. Tuz asked if anyone had a concern about safety. Ms. Moore said she doesn't believe it applies. Mr. Tuz stated it had everything to do with the setback variance. Ms. Moore asked if that had anything to do with the board.

Ms. Moore made a motion to approve the first variance based on the proposed findings of facts and the submitted variance and zoning plans as evidence. Mr. Meek seconded the motion and it carried with a unanimous vote.

Ms. Moore made a motion to approve the second variance request based on the proposed findings of facts and the submitted variance and zoning plans as evidence. Mr. Sumners seconded the motion and it carried with a unanimous vote.

Mr. Jiles made a motion to approve the third variance request based on the proposed findings of facts and the submitted variance and zoning plans as evidence. Mr. Mortimer seconded the motion and it carried with a unanimous vote.

The fourth variance was struck from the request.

Mr. Jiles expressed concern about the fifth variance. He stated he understood allowing it, but there could be dust and dinged windshields because of the traffic coming and going. Ms. Moore stated it would be more cost effective. Mr. Jiles agree and stated that it would help with drainage and is a pervious surface. Ms. Moore stated that any issues with gravel would have presented themselves by now. Mr. Tuz stated that the gravel could actually help fight the dust. Mr. Jiles agreed that it could be more advantageous for the environment.

Mr. Sumners made a motion to approve the fifth variance request based on the proposed findings of facts and the submitted variance and zoning plans as evidence. Ms. Moore seconded the motion and it carried with a unanimous vote.

ADJOURNMENT:

Mr. Jiles made a motion to adjourn the meeting at 8:49 p.m. Mr. Mortimer seconded the motion and it carried unanimously.

Respectfully submitted,



Betty Lynd
Zoning Technician/Deputy Town Clerk